

HB

406

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITAL
SITTING ROOM, JUNEAU, ALASKA 99811
907.465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

| | | |
|-------|--------|-----------|
| HHESS | 3-3-88 | 8:30 a.m. |
| HHESS | 4-6-88 | 8:30 a.m. |

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 406 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

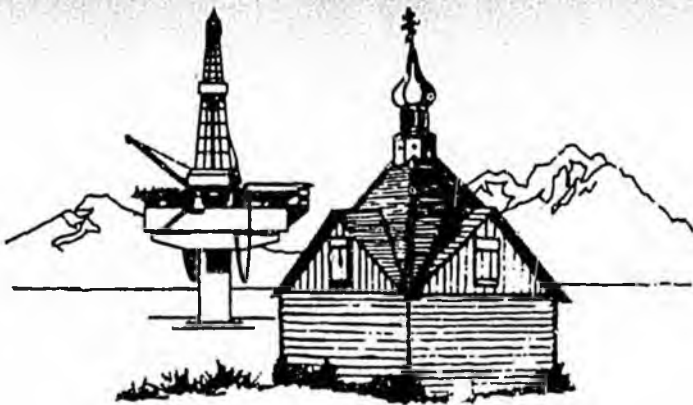
6 For an Act entitled: "An Act relating to immunity for the decision to take
7 an intoxicated or incapacitated person into protec-
8 tive custody; and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring a civil or criminal action based on
12 the decision of a peace officer or member of the emergency service
13 patrol to take an intoxicated or incapacitated person into protective
14 custody or to release a person from protective custody as provided in
15 this section, unless the decision is made maliciously.

16 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).
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KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

February 12, 1988

Honorable Michael Navarre
House of Representatives
Box V
Juneau, Alaska 99811

RE: House Bill 406
Protective Custody

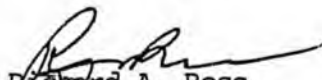
Dear Representative ^{Mike} Navarre,

Section 1 of this bill that amends AS 33.30.071(a) is unacceptable. It would require municipalities to now absorb the cost of protective custody detentions made within their jurisdiction. Those detentions made in the Borough would still be at State expense. The municipal taxpayer is being asked to absorb a cost for a service that is provided without taxpayers cost outside the municipality. As protective custody under Title 47 is not a violation or criminal offense there is no means by which the municipality can recoup the expense incurred. In the City of Kenai almost all protective custody detentions involve transients or other non-city residents where no other disposition is available.

Section 2 of this bill is much needed in order to protect the State and municipality from excessive liability exposure over an area of limited control. Changing the protective custody from a ministerial to a discretionary function as provided by this bill will accomplish that.

Your time and consideration of this input is appreciated.

Respectfully,


Richard A. Ross
Chief of Police

RAR/tc

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the responsibility for the treatment and care of intoxicated and incapacitated persons taken into protective custody.

The bill is intended to address an existing crisis relating to the placement of intoxicated and incapacitated persons in state correctional facilities. As applied in the recent decision of the Alaska Supreme Court in Busby v. Municipality of Anchorage, 741 P.2d 230 (Alaska 1987), AS 47.37.-170(b) creates an actionable duty to take into protective custody persons who are incapacitated by alcohol. According to the court, failure to take an incapacitated person into protective custody creates a cause of action against a peace officer (or member of an emergency service patrol) who exercises the discretion not to do so, for any damages or injuries that occur as a result of the officer's (or member's) decision. The Busby decision has resulted in a tremendous increase in the number of persons being taken into protective custody under AS 47.37.170 by law enforcement agencies due to the agencies' fear of potential liability. Because of the lack of adequate alternative placements, most of these persons end up being detained in state correctional facilities.

Section 2 of this bill addresses this problem by making clear that, while the duty to provide for the safety of incapacitated persons exists, the decision to take a person into protective custody or to release a person in protective custody is a discretionary function under AS 09.50.250(1) (for state employees) and AS 09.65.070(d)(2) (for municipal employees), and no cause of action may be brought based upon such a decision. In other words, this bill would have the effect of countering the decision in Busby, and is supported by the municipalities in Alaska as well as the Department of Corrections, Department of Health and Social Services, Department of Law, and Department of Public Safety. In addi-

tion, by making clear not only that this is a discretionary function but that it is the sort of discretionary function that does not give rise to liability, this bill avoids the problem created by Neakok v. Division of Corrections, 721 P.2d 1121 (Alaska 1986). The decision in Neakok virtually eliminated any effect remaining in the legislature's phrase "discretionary function" in AS 09.50.250(1).

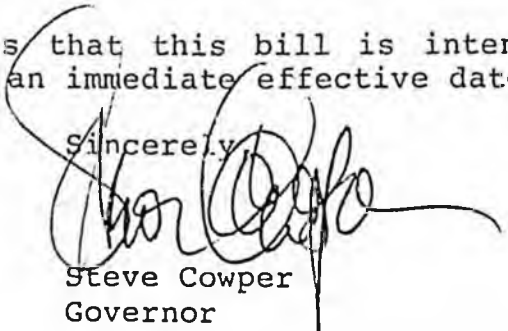
Section 1 of the bill addresses a related problem. AS 33.30.071(a) presently requires municipalities to be responsible for the cost of care for incapacitated persons placed in municipal detention facilities, while the state is responsible when such persons are placed in state correctional facilities. Nearly all incapacitated persons are taken into protective custody by municipal peace officers or emergency service patrols, but municipalities in which a state correctional facility exists have little incentive to identify and use alternative placements for incapacitated persons since it costs them nothing to place those persons in a state correctional facility. The amendments in sec. 1 of the bill require the appropriate municipality to pay the costs of protective custody in a state facility, regardless of who placed the incapacitated person in custody.

Municipalities in which a state correctional facility does not exist are fully responsible for the care and placement of incapacitated persons under AS 33.30.071(a), and thus have substantial incentive to identify and use placements less costly than prison cells.

The problem of crowding in Alaska's prison system is well known, and is exacerbated by the large numbers of incapacitated persons who are admitted under AS 47.37.170. Section 1 of this bill would equalize the burden for the cost of care of incapacitated persons between all Alaskan communities, and help address the serious crowding problem in state correctional facilities. It will also provide incentive for municipalities to identify and use placements for incapacitated persons that are less costly than prison beds and more treatment oriented, as intended by Alaska's Uniform Alcoholism and Intoxication Treatment Act (AS 47.37).

Finally, due to the crisis that this bill is intended to address, the bill contains an immediate effective date.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. Corrections
 Title: "An Act relating to the treatment and care of intoxicated and incapacitated persons." BRJ: _____
 Sponsor: _____ Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

This legislation will have no fiscal impact on the Department of Corrections. There will be increased costs for the Department of Public Safety. Projected program receipts from municipalities, based on current bookings, are \$550,000.00.

Susan E. Knight

Prepared by: Susan Knighton, Director Phone: 465-3376
 Division: Administrative Services Date: 1-19-88
 Approved by Commissioner: Susan Humphrey-Barnett Date: 1-19-88
 Agency: Department of Corrections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Bill Version: HB 406
Publish Date: 1/27/88

FISCAL NOTE

REQUEST

Revision Date: _____ Agency Affected: Public Safety
 Title: Relating to the responsibility BRU: DPS Administration
for treatment and care of intoxicated...
 Sponsor: Rules Committee Components: Contract Jails
 Requestor: Governor's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUNDS | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See Fiscal Note continuation page for analysis.

Prepared by: Gayle Horetski, Deputy Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: _____

Approved by Commissioner: *Christa E. Gold* Date: 1-21-88
 Agency: Public Safety

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

FISCAL NOTE ANALYSIS

"An act relating to the responsibility for treatment and care of intoxicated and incapacitated persons taken into protective custody; and providing for an effective date."

Under this bill, the municipality in which an intoxicated person was taken into protective custody under AS 47.37.170 is responsible for the cost of care of that person while he or she is incapacitated. This would have no effect on the Department of Public Safety, as we do not pay the costs of care for these persons now, nor would we under this bill.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

February 3, 1988

Honorable Niilo Koponen
Honorable Johnny Ellis
Co-Chairs
House Health, Education, and
Social Services Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 406, treatment and care of
intoxicated and incapacitated
persons
Our file no. 773-88-0051

Dear Representatives Koponen and Ellis;

I let an error in this bill slip by. On page 1, line 27, the word "readopted" should, of course, read "reenacted." Assuming that the bill will be reported out of your committee, I would appreciate your making this correction in a committee substitute. (The "readopt" language comes from regulations work, whereas the "reenact" is appropriate for legislation.)

We have been advised by Revisor of Statutes David Dierdorff that, with the computerization of bill processing, the effect of this error is to have the section "read" by the SIRS program in BASIS as simply "repealing" the provision. SIRS is programmed to read "repealed and reenacted" as equivalent to "amending," but if the words "and reenacted" do not appear after "repealed," it assumes that the section cited in the lead-in is repealed. David also advises that it is not possible to manually override the entry and correct it until a new document, such as a committee substitute, is actually entered into the system.

Hon. Niilo Koponen and Hon. Johnny Ellis
Co-Chairs, House Health, Education, and
Social Services Committee
File no. 773-88-0051

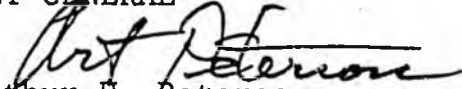
February 3, 1988
Page 2

Sorry to have let this slip by. Thanks for taking care
of it.

Yours truly,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

GBS:AHP:cb

cc: Bob Evans
Legislative Liaison
Office of the Governor